Glass Bottle Blowers Association of the United States and Canada, Local 149, AFL-CIO (Anchor Hocking Corporation) *and* **Marvin Wedge.** Case 6-CB-4787

April 7, 1981

DECISION AND ORDER

On September 9, 1980, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in reply to Respondent's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Adiministrative Law Judge found that Respondent violated Section 8(b)(1)(A) of the Act by agreeing with the Company to a new seniority system. We agree with his finding that the new system is unlawful since it is, as he found, based on length of union membership. However, we do not adopt his finding to the extent that it is based on his conclusion that Respondent violated its duty of fair representation by negotiating the change in the seniority system in midcontract term, immediately preceding a layoff, and without good reason.

A union is free at any time to negotiate a change in a seniority system as long as in doing so it complies with its duty to fairly, impartially, and in good faith represent all of the employees in the unit. The Administrative Law Judge and the General Counsel cite no authority, and we know of none, for the proposition that the negotiation and implementation of such a change is precluded because a layoff is imminent or because some employees will be affected adversely by the change. Indeed, the foreseeable and likely consequence of a change in a seniority system is that some unit employees will benefit while others will lose. But as the Supreme Court stated in *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 at 338 (1953):

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Thus, not every act of disparate treatment is proscribed by Section 8(b)(1)(A) of the Act, but only those which, because motivated by hostile, invidious, irrelevant, or unfair considerations, may be characterized as arbitrary conduct. Insofar as Respondent effected the change in the seniority system in this case on the basis of longevity in union membership, its conduct was "arbitrary conduct," and therefore violative of the Act as alleged and found. In all other respects, however, we find that Respondent's conduct was in accord with the principles enunciated by the Court in *Ford Motor Co.* v. *Huffman, supra.*

Here, a February 1979 layoff in the "Automatic Machine Department" (AMD) unit, the unit involved, had engendered employee complaints about the application of the seniority lists then in effect. This led Respondent and the Company to conclude that those seniority lists were improperly compiled. Thus, they then agreed to change the seniority system at the next contract negotiations. (The contract was scheduled to expire on March 31, 1980.)

However, in June 1979 the Company announced that a permanent layoff would occur on July 1, 1979, and that it expected that 50 employees in the AMD unit would be laid off at that time. The Company informed Respondent that, if the existing seniority lists were used, layoffs in violation of the contract would occur. It also stated that it was unwilling to subject itself to liability as a result of such action.[2] Consequently, just before the layoff the Company and Respondent bargained for, orally agreed to, and did establish and maintain revised seniority lists for journeyman operators, upkeepmen, and group leaders in the AMD unit.

Apart from the fact that the new system was unlawfully based on length of union membership, we find nothing improper in Respondent's conduct. The concerns which led Respondent and the Company to negotiate a new seniority system in June, and apply it to the July layoff, were legitimate. That legitimacy is not negated simply because the

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Company's concerns, which Respondent apparently shared, were based on the fact that, as fully described by the Administrative Law Judge in his Decision, Respondent and the Company over the years had developed seniority systems which had no basis in the express language of the contract or were even inconsistent with the contractual language.

action was taken in the face of a layoff or in mid-contract term. As already stated, such factors pose no impediment to the parties' conduct. Further, we find that it was reasonable for Respondent to enter into negotiations for a new seniority system at the time it did. In February 1979 it had agreed that the seniority system had to be changed. That the time of the change was then set for the next contract negotiations is of little or no consequence. When the pending July layoff brought to a head the problems inherent in the old system, Respondent agreed with the Company that revision of the seniority lists could not be delayed. Surely, Respondent's agreement to replace the old system then rather than insist on its remaining in effect until after the layoff cannot be faulted in light of its February agreement with the Company to change that system.[3]

Accordingly, while we find that the new seniority system was unlawful because of its equation to union membership, we find no other basis to conclude that Respondent failed in its duty to fairly represent the unit employees concerning the change effected in the seniority of the unit employees. We shall therefore modify that portion of the Administrative Law Judge's recommended Order which is based on any findings to the contrary.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Glass Bottle Blowers Association of the United States and Canada, Local 149, AFL-CIO, South Connellsville, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following as paragraphs 1(a) and (b), and delete paragraph 1(c).

"(a) Maintaining or giving effect to the new seniority system instituted July 1, 1979, for journeyman operators, upkeepmen, and group leaders in the Automatic Machine Department of the Anchor Hocking Corporation plant in South Connellsville, Pennsylvania.

"(b) Agreeing to maintain or give effect to any seniority system which bases seniority upon length of union membership."

2. Reletter paragraph 1(d) as paragraph 1(c).

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT maintain or give effect to the seniority system instituted July 1, 1979, for journeyman operators, upkeepmen, and group leaders in the Automatic Machine Department of the Anchor Hocking Corporation plant in South Connellsville, Pennsylvania.

WE WILL NOT agree to maintain or give effect to any seniority system which bases seniority upon length of union membership.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL retroactively restore the seniority system for journeyman operators, upkeepmen, and group leaders which was utilized until in or about June 1979.

WE WILL make whole those employees who were downgraded to lower seniority positions for any loss of earnings they may have suffered as a result of the change in the seniority system, with interest.

GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 149, AFL-CIO

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge: This case was heard at Uniontown, Pennsylvania, on March 13, 1980. The charge was filed on July 10, 1979, by Marvin Wedge, an individual. The complaint, which issued on September 5, 1979, and was amended on March 5, 1980, alleges that Glass Bottle Blowers Association of the United States and Canada Local 149, AFL-CIO (herein the Union or Respondent), violated Section 8(b)(1)(A) of

[3] Certainly, Respondent was not required to leave the system unchanged merely because, as the General Counsel contends, it was under no obligation to make a change. In this regard, *General Truck Drivers, Warehousemen, Helpers and Automotive Employees, Local 315, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Rhodes & Jamieson)*, 217 NLRB 616 (1975), enfd. 545 F.2d 1173 (9th Cir. 1976), relied on heavily by the General Counsel, is distinguishable. There the Board found that the Union had improperly abdicated its responsibility for fair treatment of employees seeking bumping rights by leaving the decision to a majority vote of those employees who would be adversely affected by a determination to permit bumping. There was no such abdication of responsibility in this case.

the National Labor Relations Act, as amended. The gravamen of the complaint is that the Union allegedly arbitrarily negotiated a new and different seniority system with Anchor Hocking Corporation, the party in interest (herein the Company), which adversely affected certain of the Company's employees. The Union's answer denies the commission of the alleged unfair labor practices, and affirmatively contends that the Union properly applied the seniority provisions of its collective-bargaining contract with the Company. All parties were afforded full opportunity to participate, to present relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The General Counsel and Respondent each filed a brief.

Upon the entire record in this case[1] and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, an Ohio corporation, maintains an office and place of business in South Connellsville, Pennsylvania, where it is engaged in the manufacture and nonretail sale and distribution of glass and related products. In the operation of its business, the Company annually sells and ships goods valued in excess of $50,000 from its South Connellsville facility directly to points outside of Pennsylvania. I find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background: Pertinent Collective-Bargaining Contract Provisions and Practices*

Since at least 1941 the Union and its parent International have been the collective-bargaining representative of the Company's Automatic Machine Department (AMD) employees at the South Connellsville plant. Other locals of the same international also represent units of employees at that plant. Local 139 represents a unit of production and maintenance employees, and Locals 124 and 136 each represent other units of employees. Until 1971, contracts covering the AMD employees and similarly situated employees at other company plants were negotiated on a companywide basis. Since 1971, contracts have been negotiated separately at each plant. The AMD unit includes employees in the job categories of apprentice machine operators, journeyman machine operators, machine upkeepmen, upkeepmen group leaders, machine repair mechanics, and feedermen. There are also unskilled employees, e.g., sweepers, in the unit. The first four categories are listed above in ascending order of skill, experience, and/or qualifications. The present case involves consideration of the seniority rights of the journeymen operators, upkeepmen, and group leaders. The collective-bargaining agreement which was in effect from April 1, 1977, through March 31, 1981, contained the following provisions which are at least arguably applicable to the issues presented in this case (provisions italicized are deemed by me to be of particular significance):

ARTICLE 1

Union Recognition and Jurisdiction

1. The Company recognizes the Union as the sole collective bargaining agent for all Apprentice Machine Operators, Journeyman Machine Operators, Machine Upkeep Men, other hourly rated employees who are regularly assigned to the Forming Department, all employees in the Machine Repair Department which have such a department, and employees who devote their full time to the repair and maintenance of forming machines, except supervisors and employees represented by other Unions, in all of the glass container manufacturing plants of the Company. . . .

2. As a continuing condition of employment, all employees of the Company now or hereafter coming under the jurisdiction of this Contract, shall become and remain members of the Union on the thirtieth day following the beginning of such employment, or the execution, or effective date of this Contract, whichever is later, all to be enforced and applied in accordance with the provisions of Section 8(a)(3) of the Labor-Management Relations Act of 1947, as amended.

* * * * *

ARTICLE 7

Seniority

Seniority will commence from date of employee's first day of work but will not be effective until the thirtieth (30) calendar day after employment and will accumulate during his course of employment.

1. During periods of reduced activity making a reduction in the working forces necessary, Apprentice Machine Operators shall be the first laid off, provided Journeyman Machine Operators and Machine Upkeep Men with the necessary experience to operate the machines remaining in production are on the payroll and available for work.

2. If further reduction of the work force is necessary, those employees with least seniority shall be laid off. It is further understood that Journeyman Machine Operators retained under this Article shall accept the responsibility of maintaining regular production levels.

Employees other than Apprentice Machine Operators, Journeyman Machine Operators and Machine Upkeep Men under the jurisdiction of this Contract

[1] Certain errors in the transcript are hereby noted and corrected.

shall be laid off in accordance with local seniority agreements and practices.

3. In the case of temporary layoffs, as hereinafter defined, shift seniority shall apply immediately in accordance with the provisions of Section 1. Temporary layoffs shall be defined as not exceeding 3 working days, except that in cases of color changes temporary layoffs shall be defined as not exceeding 5 working days. When the layoff will exceed 3 working days, or in the case of a color change 5 working days, the seniority provisions of Section 1 shall apply.

4. (a) In like manner, a rehiring of employees laid off under this Article shall be handled in the reverse order of their layoff.

* * * * *

5. Plant seniority in the unit plus ability shall govern in cases of promotions.

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ARTICLE 41

Wages of Apprentice Machine Operators

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3. *An Apprentice Machine Operator's seniority as a Journeyman Machine Operator shall begin with the date he began his apprenticeship as a designated or classified Apprentice Machine Operator or shall begin two years prior to the date he completes his apprenticeship, whichever is the lesser.*

4. All time spent operating glass forming machines shall be credited toward an employee's apprenticeship. . . .

Article 41 of the contract also contains a progressive wage scale for apprentice operators, based on the number of accumulated hours worked by the apprentice, up to a total of 4,000 hours. As will be discussed, that total of 4,000 hours is the number of hours required to qualify the employee as a journeyman.

The opening paragraph of article 7, which is unnumbered, was originally negotiated and added to the seniority clause in 1974. The Company's labor relations manager, Chris Wagner, testified that the new opening paragraph was added because the parties were concerned about "outside agencies" which might look "very closely" at Respondent's seniority system. Wagner's intimation was that the problem concerned the possible effect of that system on the status of women and minorities. The makeup of the Automatic Machine Department is such as to suggest that the possibility of action by "outside agencies" is more than theoretical. As of the time of this hearing, there were no women and three blacks in the unit, which even after the July 1979, layoff included over 140 employees. In contrast Local 136, known as the "women's local," represents a unit of employees, predominantly female, who perform less skilled work than that performed in the AMD.

On its face, the 1977–80 collective-bargaining contract contains two seemingly inconsistent definitions of seniority; i.e., the opening paragraph of section 7, and paragraph 3 of article 41. Additionally, over the years the Company and the Union have developed union security and seniority practices which in some respects have no basis in the express language of the contract or are even inconsistent with the contractual language. Until 1964, employees were required to work a total of 2,000 hours at machine operation, as a prerequisite to obtaining journeyman operator status. Upon the completion of such service, the employee obtained a journeyman card and joined the Union, and the employee's seniority was determined from that point. In sum, the date upon which the employee obtained journeyman status determined both his seniority rights as a journeyman and the applicability of the union-security clause. In 1964 the prerequisite for journeyman status was increased from 2,000 to 4,000 hours worked as a machine operator. Completion of this requirement might take as much as 4 or 5 years. For example, an apprentice might spend much of his time performing work other than machine operation, and such other work was not credited toward journeyman status. Since 1964 employees have been required to join the Union upon the completion of 500 hours of machine operation work. Since 1964 and until July 1, 1979, seniority was initially determined by the date upon which the employee completed apprenticeship and obtained a journeyman operator's card, which date was backdated 2 years for seniority purposes, if, as was usually the case, the employee served more than 2 years in apprenticeship status.[2] Seniority lists were maintained in the AMD for the categories of journeyman operators, upkeepmen, and group leaders, respectively.[3] Journeymen were listed in order of seniority, and in accordance with the method which was used at the time they obtained such seniority, i.e., depending on whether they obtained journeymen status before or after the 1964 change in computing seniority status. Those journeymen who progressed to the higher status of upkeepman or group leader retained their positions on the journeymen seniority list. The upkeepmen list was compiled in accordance with the date upon which each employee became an upkeepman. The group leaders, all of whom obtained such position at or about the same time, i.e., when the position was created in early 1977, were listed in order of plant seniority in the unit. The group leaders, all of whom progressed from upkeepmen, also retained their positions on the journeymen and upkeepmen seniority lists. The method by which these lists were compiled came about by oral agreement between the Company and the Union, and was never reduced to writing. The lists were used as the basis for ascertaining the seniority rights of the employ-

[2] Union President Homer Richter, who was presented as an adverse witness for the General Counsel and also as a witness for the Union, initially testified that even after 1974 seniority began when the employee completed 500 hours at machine operation, and that there was no backdating. However, Richter subsequently admitted that in fact seniority was determined from the time that the employee obtained a journeyman operator's card, and that seniority was usually backdated by 2 years.

[3] The journeymen and upkeepmen lists were posted. The group leader list was kept in the department office.

ees involved in their respective job categories and for purposes of layoff and recall, bumping, vacation preference, and bidding on jobs. Thus, for example, in the event of a reduction in force in all three job categories, the employees at the bottom of the group leader list would be reduced to upkeepmen, those at the bottom of the upkeepmen list would be reduced to operators, and those at the bottom of the journeyman operators list would be laid off from their positions.

B. *The Allegedly Unlawful Change in Seniority Practices*

In February 1979, there was a temporary layoff of employees in the AMD unit. The seniority lists were used to determine which employees would be bumped or laid off. No grievances were filed as a result of the Company's reliance on the seniority lists. However, Union President Richter testified that there were complaints from some employees. Company Plant Personnel Manager William Smith, who was presented as a union witness, testified that he discussed the matter with Richter and other union officials. According to Smith, they agreed that the seniority lists were improperly compiled and further agreed to change the system at the next contract negotiations. (The existing contract was scheduled to expire on March 31, 1980.) However, in June 1979, the Company announced that effective as of July 1, 1979, it was permanently reducing the size of its operations from five to four furnaces. This meant that some 300 plant employees would be laid off, including about 50 employees in the AMD unit. The Company took the position that, if the existing seniority lists were used as the basis for selecting employees for bumping and layoff, some seven or eight employees would be laid off in violation of the contract, and the Company was unwilling to incur liability as a result of such action. Union President Richter and International Representative James Rodgers testified in sum that Richter consulted with Rodgers, who advised him to "enforce" the contract by applying "unit" seniority rather than "job" seniority. In June 1979, just before the layoff, and without any indicated disagreement between the parties, the Company and the Union orally agreed to and did establish and maintain revised seniority lists for all three job categories (journeyman operators, upkeepmen, and group leaders). No change was made with respect to those employees who obtained their seniority status under the system which existed until 1964. With respect to all other employees, all three lists were revised to list the employees in the order in which they joined the Union, either upon completion of the first 500 hours of apprentice work or upon transferring into the unit as a journeyman. The change adversely affected the seniority rights of employees in all three categories. Among the journeymen, seven or eight employees who would have retained their positions under the former seniority list were laid off by reason of the change.[4]

[4] Marvin Wedge, the Charging Party in this proceeding, was a group leader at the time of the July 1979 layoff. Union President Richter testified that Wedge was bumped to upkeepman but restored to group leader about 2 or 3 weeks later and that he probably would have been bumped under the former list. Whether or not Wedge as an individual was adversely affected by the change is immaterial at this stage of the proceeding. Neither the present unfair labor practice charge nor the complaint is limited to the status of any single-named individual or individuals. Three employees (Wedge, William Kaylor, and Alfred Nativio, Jr.) filed grievances with the Union, alleging that they were adversely affected by the change. The Union is holding the grievances in abeyance pending the outcome of this proceeding.

C. *Analysis and Concluding Findings*

The General Counsel contends, in sum (br., p. 8), that the Union violated Section 8(b)(1)(A) of the Act by arbitrarily effecting a change in the seniority system, and that the Union's action was arbitrary because (1) the change was accomplished at a time when layoffs were imminent, and (2) the change equated seniority with length of union membership. The General Counsel does not argue that the change was motivated by animus toward any individual or group of individuals. The union contends in sum that the former seniority lists were inconsistent with the contract, and that the change was necessary in order to conform seniority practices with the contractual requirement of "plant seniority" (br., p. 2).

A union has an obligation under the Act to fairly, impartially, and in good faith represent all of the employees in the bargaining unit, and that obligation extends to the union's actions in negotiations as well as to its actions in processing grievances. *Warehouse Union, Local 860 International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (The Emporium)*, 236 NLRB 844, fn. 2 (1978); see also *General Truck Drivers, Warehousemen, Helpers and Automotive Employees, Local 315 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Rhodes & Jamieson, Ltd.)*, 217 NLRB 616 (1975), enfd. 545 F.2d 1173 (9th Cir. 1976). "It is well settled that Section 8(b)(1)(A) of the Act prohibits unions, when acting in a statutory representative capacity, from taking action against any employee upon consideration or upon the basis of classifications that are irrelevant, invidious, or unfair. It is, however, equally well settled that a wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. Thus it is not every act of disparate treatment or negligent conduct which is proscribed by Section 8(b)(1)(A), but only those which, because motivated by hostile, invidious, irrelevant, or unfair considerations, may be characterized as 'arbitrary conduct.'" *Steelworkers Local Union No. 2869 (Kaiser Steel Corporation)*, 239 NLRB 982 (1978).

The General Counsel and the Union agree as to the foregoing general propositions of law, but they disagree as to the applicability of those propositions to the present facts. I find upon consideration of the present facts that the Union has violated its duty of fair representation. Specifically, the Union violated that duty by its action, in midcontract term, and immediately preceding a major major layoff, of negotiating a change in the method of computing seniority which deprived certain employees of longstanding seniority rights, and which change was based on a factor which had no basis either in contract

language or established seniority practices, but simply operated to reward employees on the basis of longevity of union membership. This does not mean that the Company and the Union could not have negotiated a change in seniority practices during their contract negotiations as part of a new contract. Nor does it mean that, even in midcontract term, the Company and the Union could not have agreed to correct a practice which conflicted with their contract. However, neither situation is here involved. The collective-bargaining contract contains two definitions of seniority. The first, in article 7, states that seniority "will commence from the employee's first day of work." This definition at least arguably embodies the principle of "plant seniority." The second provision, contained in article 41, states in essence that an apprentice's seniority as a journeyman machine operator shall begin upon completion of the apprenticeship, backdated 2 years. This provision embodies the principle of "job seniority." The contractual language attaches no significance, for seniority purposes, to the completion of 500 hours of apprenticeship.[5] Rather, since 1964, and notwithstanding the express language of the contractual union-security clause, the completion of 500 hours was the point at which the employee joined the Union.

Since 1964, and concurrently with a series of collective-bargaining contracts, the Company and the Union have maintained seniority lists which with respect to journeyman operators and upkeepmen followed the principle of job seniority. With respect to apprentices who progressed to journeyman status, the list was consistent with article 41, section 3, of the contract. As to group leaders, the Company and the Union followed the practice of plant seniority within the unit. It is significant that, notwithstanding their professed intention to follow "plant seniority," the Company and the Union replaced this standard with longevity of union membership; i.e., the same standard which is now used for all three lists. If, as suggested by Richter and Wagner, the Company and the Union were concerned about "outside agencies," then it is probable that they would have sought to utilize plant or even industry seniority, without restriction as to unit, as the basis for seniority listing. Thus, for example, a woman who transferred into the AMD unit from the unit represented by Local 136 could draw upon her accumulated seniority in the Local 136 unit. However, it is difficult to see how opportunities for women and minorities would be advanced by utilizing length of membership in the Union, i.e., Local 149, as the seniority standard. Moreover, plant or industry seniority would be at least arguably consistent with article 7 of the contract. Thus, article 7 provides that seniority will commence from "date of employee's first day of work," but does not expressly limit such employment to the bargaining unit or even to the South Connellsville plant. In sum, it is evident that equal opportunity or affirmative action considerations played no part in the precipitate change in seniority practices.

I find that the Union, by its actions, unfairly and without legitimate reason deprived certain employees of their longstanding seniority status. The seniority lists had been compiled in the same manner since 1964, and continued to be utilized by the Company and the Union for more than 5 years after the contract change which allegedly nullified the established seniority practices. The lists were posted or made available for all to see, and were consistently utilized for all purposes in determining seniority rights. Nevertheless, when the chips were down, and the employees were confronted with a large scale permanent layoff, the Union abruptly agreed to a different system which, without any advance warning, arbitrarily deprived certain employees of their accumulated seniority rights, and in practical effect in some instances deprived them of their jobs. This is not a case where a union, acting from a position of economic weakness, has reluctantly given in to employer demands in contract negotiations which might seem arbitrary or unfair. Compare *Strick Corporation*, 241 NLRB 210 (1979). The testimony of the Union's witnesses indicates that the Company and the Union were of one mind on this matter. Moreover longevity of union membership was an arbitrary, irrelevant, and discriminatory basis for depriving certain employees of their accumulated seniority status. See *Local 1332, International Longshoremen's Association, AFL-CIO (Philadelphia Marine Trade Association)*, 150 NLRB 1471, 1476 (1965). Therefore, the Union violated Section 8(a)(1)(A) of the Act by agreeing to a new and different seniority system which adversely affected the accumulated seniority rights of certain employees. As the new system is improperly based on length of union membership, neither the Union nor the Company may lawfully maintain or give effect to that system. Rather, the former system must be deemed as remaining in effect unless and until the Company and the Union lawfully negotiate otherwise.[6]

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By arbitrarily agreeing with the Company to establish a new and different seniority system, based on length of union membership, which adversely affected the job status and rights of employees in the bargaining unit represented by the Union, the Union has restrained and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[5] The contract provides that the apprentice shall receive a first-step wage increase upon the completion of 500 hours. However this provision has no significance under the contract for seniority purposes.

[6] In early 1980, the Company and the Union negotiated a new collective-bargaining agreement to replace the contract which expired on April 1, 1980. The present record does not indicate that the contractual language was changed in any material respect with respect to the seniority and union-security provisions discussed above. Therefore it is evident that the new seniority system was perpetuated as a result of the Union's unlawful conduct in agreeing to that system.

THE REMEDY

Having found that the Union has violated Section 8(b)(1)(A) of the Act, I shall recommend that it be required to cease and desist from such violations, and take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Union be ordered to cease and desist from arbitrarily agreeing to new and different seniority systems, utilizing a seniority system based on length of union membership, or in any like or related manner infringing upon employee rights. I shall further recommend that the Union be ordered to cease and desist from maintaining or giving effect to the seniority system which was put into effect on or about July 1, 1979, to restore the seniority system which was in effect prior to that time, and to make whole those employees who were bumped to lower seniority classifications for any loss of earnings they may have suffered as a result of the change in the seniority system. As the present record is inadequate for the purpose of specifically identifying such employees, identification will be left to the compliance stage of this proceeding. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in the manner and amount prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[7]

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[8]

The Respondent, Glass Bottle Blowers Association of the United States and Canada, Local 149, AFL-CIO, South Connellsville, Pennsylvania, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Arbitrarily agreeing to changes in seniority systems or to new and different seniority systems for unit employees which result in employees being downgraded to lower or less desirable seniority status.

(b) Maintaining or giving effect to the new seniority system for journeyman operators, upkeepmen, and group leaders in the automatic machine department of the Anchor Hocking Corporation plant in South Connellsville, Pennsylvania, which system was instituted on or about July 1, 1979, or any other system which bases seniority upon length of union membership.

(c) Otherwise failing to represent unit employees in a fair and impartial manner.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Retroactively restore the seniority system for journeyman operators, upkeepmen, and group leaders which was utilized until in or about June 1979.

(b) Make whole those employees who were downgraded to lower seniority positions for any loss of earnings they may have suffered as a result of the change in the seniority system, as set forth in the section of this Decision entitled "The Remedy."

(c) Post at its business offices, meeting places, and at the Company's South Connellsville plant copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to automatic machine department employees or members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[7] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716, 717-721 (1962).

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."